

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Eric R. Searles

v.

Civil No. 05-cv-184-PB

State of New Hampshire, et al.

REPORT AND RECOMMENDATION

Eric Searles filed a complaint pursuant to 42 U.S.C. § 1983 alleging that the defendants had violated his constitutional rights during his incarceration at the Hillsborough County House of Corrections. On October 3, 2005, I ordered Searles to amend his complaint to demonstrate that he had exhausted his administrative remedies prior to filing his complaint in this Court as required by 42 U.S.C. § 1997e, which mandates that no prison conditions action may be brought until all available administrative remedies are exhausted. Porter v. Nussle, 534 U.S. 516, 532 (2002).

My October 3 Order directed Searles to amend his complaint within ten days. Searles filed a "Motion to Continue" (document no. 12) on November 2, 2005, which appears to allege that Searles has "received numerous death threats not to file grievances" and that he has been retaliated against and abused at the prison. However, Searles also includes with his motion a number of

grievance forms, the earliest of which was dated June 23, 2005. nine days after Searles filed his June 14, 2005 complaint. Searles' filing demonstrates, despite his allegations of threats, that he is able to file grievances, as he has now provided copies of a number of grievances submitted since June 23, 2005.

Searles must completely exhaust his administrative remedies prior to initiating an action in this Court. Because he did not do that, I recommend that this matter be dismissed without prejudice to refiling once Searles has completed exhaustion of his administrative remedies. If Searles' remedies are now completely exhausted, he may refile immediately.

Any objections to this Report and Recommendation must be filed within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the district court's order. See Unauthorized Practice of Law Comm. v. Gordon, 979 F.2d 11, 13-14 (1st Cir. 1992); United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986).



James R. Muirhead
United States Magistrate Judge

Date: February 14, 2006
cc: Eric R. Searles, *pro se*